

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON

UNITED STATES OF AMERICA

v.

CRIMINAL NO. 2:15-00124

CHADWICK J. LUSK

RESPONSE OF THE UNITED STATES TO
THE COURT'S ORDER OF FEBRUARY 4, 2016

Comes now the United States of America, by and through Larry R. Ellis, Assistant United States Attorney for the Southern District of West Virginia, and in response to the Court's Order of February 4, 2016, represents as follows:

The United States has no objection to the Court's holding this matter in abeyance until the publication of the Supreme Court's opinion in *McDonnell v. United States*, ____ S.Ct. ____, 2016 WL205948, No. 15-474. Based on the question on which certiorari was granted and further based on the substantial and varied amicus briefing in that case and further based on the long and winding history of the honest-services mail-fraud theory, it is difficult to predict the direction, breadth or depth of any ruling that may ensue. Accordingly, it is impossible to know whether any such ruling might affect this Court's analysis of the facts before it in this matter. It is

anticipated that an opinion in *McDonnell* may issue as early as June of this year. Inasmuch as the matter before the Court here does not involve violent crime and further inasmuch as the defendant is not incarcerated and has caused no further problems during the long pendency of this case, the delay implied by the four-to-five-month wait for the Court's ruling is outweighed by the advantage of the certainty of deciding this matter in accordance with controlling precedent from the outset and thereby minimizing the prospect of post-conviction proceedings.

The United States has consulted with counsel for the defendant and has been authorized to represent to the Court that the defendant is in agreement with this response.

Respectfully submitted,

CAROL A. CASTO
Acting United States Attorney

By:

/s/Larry R. Ellis
LARRY R. ELLIS
Assistant United States Attorney
WV Bar No. 1122
300 Virginia Street, East
Room 4000
Charleston, WV 25301
Telephone: 304-345-2200
Fax: 304-347-5104
Email: larry.ellis@usdoj.gov

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing "Response of the United States to the Court's Order of February 4, 2016" has been electronically filed and service has been made on opposing counsel by virtue of such electronic filing this 12th day of February, 2016, to:

Thomas W. Smith, Esquire
405 Capitol Street
Suite 701
Charleston, West Virginia 25301

/s/Larry R. Ellis
LARRY R. ELLIS
Assistant United States Attorney
WV Bar No.1122
300 Virginia Street, East
Room 4000
Charleston, WV 25301
Telephone: 304-345-2200
Fax: 304-347-5104
Email: larry.ellis@usdoj.gov